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Attorneys for United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ) No. 16CR1409-H  
Plaintiff, )  
v. ) JOINT MOTION TO (1) CONTINUE  
HOOTAN MELAMED (1), ) MOTION HEARING AND (2) EXCLUDE  
JEAN FRANCOIS PICARD (2), ) TIME UNDER THE SPEEDY TRIAL ACT  
JOHN PANGELINAN (3), )  
PHONG HUNG TRAN (4), ) Date: October 24, 2016  
JONATHAN PENA (5), ) Time: 2:00 p.m.  
Defendants. )

The parties jointly move to continue the motion hearing currently set for October 24, 2016 at 2:00 p.m. to January 23, 2017 at 2:00 p.m., and to exclude time under the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(7). In support, the parties submit as follows:

1. On June 16, 2016, a federal grand jury returned a 14-count indictment charging the defendants with conspiracy, honest services mail fraud, violations of the Travel Act, and criminal forfeiture, in connection with an alleged \$34 million kickback and bribery scheme through which service providers paid bribes and kickbacks to doctors to write prescriptions for compound creams or make referrals for durable

1 medical equipment, and then to submit them to specific pharmacies and  
2 companies to be filled.

3       2. The defendants made their initial appearances and were  
4 arraigned on the indictment in the Southern District of California on  
5 June 28, 2016. The Speedy Trial Act, 18 U.S.C. § 3161(c)(1), requires  
6 trial to commence within 70 days from that date. Section 3161(h)  
7 excludes certain periods of time in calculating the 70 days, including  
8 delay resulting from a continuance if the court finds "the ends of  
9 justice served by taking such action outweigh the best interest of the  
10 public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A).  
11 The court must "set[] forth . . . either orally or in writing, its  
12 reasons" for the finding. Id. The court "shall consider" the following  
13 factors, "among others":

14           (i) Whether the failure to grant such a continuance in the  
15 proceeding would be likely to make a continuation of such  
proceeding impossible, or result in a miscarriage of  
justice.

16           (ii) Whether the case is so unusual or so complex, due to  
17 the number of defendants, the nature of the prosecution, or  
18 the existence of novel questions of fact or law, that it is  
unreasonable to expect adequate preparation for pretrial  
proceedings or for the trial itself within the time limits  
established by this section.

20           . . .

21           (iv) Whether the failure to grant such a continuance in a  
22 case which, taken as a whole, is not so unusual or so  
complex as to fall within clause (ii), would deny the  
defendant reasonable time to obtain counsel, would  
unreasonably deny the defendant or the Government  
continuity of counsel, or would deny counsel for the  
defendant or the attorney for the Government the reasonable  
time necessary for effective preparation, taking into  
account the existence of due diligence.

26           U.S.C. § 3161(h)(7)(B). "No continuance under [this provision] shall be  
27 granted because of general congestion of the court's calendar, or lack  
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1 of diligent preparation or failure to obtain available witnesses on the  
2 part of the attorney for the Government." U.S.C. § 3161(h)(7)(C).

3       3. The parties agree that the ends of justice served by granting  
4 the requested continuance outweigh the best interest of the public and  
5 the defendants in a speedy trial, for the following reasons:

6           a. According to the indictment, the alleged scheme involved  
7 years' worth of medical treatments, millions of dollars in bills,  
8 thousands of dollars in corrupt payments, and hundreds of patients.

9           b. Because the claims involve patient identities, medical  
10 treatment, and billing records, the discovery in this case is  
11 sensitive. The Court issued a protective order on July 18, 2016.

12           c. On about August 4, 2016, the United States made a first  
13 round of discovery available to defense counsel, by loading eth  
14 material onto hard drives provided by each defense team. This  
15 round of discovery included thousands of pages of bank records,  
16 agent reports, and subpoenaed documents, as well as hundreds of  
17 audio recordings ranging in duration from a few minutes to over an  
18 hour. This production represented the bulk of the discovery  
19 material.

20           d. On about September 21, 2016, the United States made  
21 available a second round of discovery, consisting of emails and  
22 additional bank records and reports. With this production of  
23 discovery, and recognizing that discovery obligations are ongoing,  
24 the disclosures are substantially complete.

25           e. Given the volume of discovery and the need to protect  
26 and limit its disclosure, the defense needs time to review the  
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1 material before they can file and litigate pretrial motions and  
2 provide an estimate of trial length.

3 4. Accordingly, the parties request a continuance of the motion  
hearing until January 23, 2017.

5 5. The parties have exercised due diligence. The parties submit  
6 that the amount of discovery and the nature of the charges make it  
7 unreasonable to expect adequate preparation for pretrial proceedings or  
8 the trial itself within the time limits established by the Speedy Trial  
9 Act. The parties further submit that the failure to grant the requested  
10 continuance would deny counsel the reasonable time necessary for  
11 effective preparation and result in a miscarriage of justice.

12 6. Defendants are all currently out of custody.

13 7. Counsel for defendants represent that they have discussed the  
14 need for this continuance with their respective clients, and that each  
15 defendant agrees to and joins in the request for this continuance.

16 8. The parties therefore jointly move for a continuance and to  
17 exclude time under the Speedy Trial Act. The parties agree the period  
18 of delay excluded spans from the filing of this joint motion until the  
19 new date for the hearing pursuant to U.S.C. § 3161(h)(1)(D) and  
20 (h)(7)(A); specifically, that the time between October 14, 2016 and  
21 January 23, 2017 shall be excluded.

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1 SO STIPULATED AND AGREED.

2 DATED: October 17, 2016 LAURA E. DUFFY  
United States Attorney  
3 s/ Valerie H. Chu  
VALERIE H. CHU  
4 Assistant United States Attorney

5 s/Steven Goldsobel (w/authorization)  
STEVEN GOLDSOBEL  
6 Counsel for Hootan Melamed (Def 1)

7 s/Gerald Werksman (w/authorization)  
GERALD WERKSMAN  
8 Counsel for Jean Picard (Def 2)

9 s/Patrick Q. Hall (w/authorization)  
PATRICK Q. HALL  
10 Counsel for John Pangelinan(Def 3)

11 s/Thomas Warwick (w/authorization)  
THOMAS WARWICK  
12 Counsel for Phong Tran (Def 4)

13 s/Gretchen von Helms (w/authorization)  
GRETCHEN VON HELMS  
14 Counsel for Jonathan Pena (Def 5)

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IT IS HEREBY CERTIFIED THAT:

I, Valerie H Chu, am a citizen of the United States and am at least 18 years of age. My business address is 880 Front Street, San Diego, California 92101-8893.

I am not a party to this case. I have caused service of the attached Joint Motion on the parties to this case by filing the foregoing with the Clerk of the District Court using its ECF system, which electronically notifies them.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 17, 2016

s/ Valerie H. Chu  
VALERIE H. CHU